

**CITY OF NEWBERG COUNCIL MINUTES
OCTOBER 20, 2008
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

Work Session was held prior to this meeting. A general discussion was held. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:00 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Mike Boyes	Roger Currier	Bob Larson
	Bart Rierson	Marc Shelton		

Staff

Present:	Terrence Mahr, City Attorney	Daniel Danicic, City Manager
	Barton Brierley, Planning and Building Director	Brian Casey, Police Chief
	Howard Hamilton, Public Works Director	Norma I. Alley, City Recorder
	David Beam, Economic Development Coordinator	Jennifer Nelson, Recording Secretary

Others

Present: Virginia M. Rake, Susan Dawson, April McGowan, Beth-Ann C. Zulashi, Wes Butler, Debra Headley

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported the annual review of the System Development Charges (SDC) occurred and as of January 1, 2009, and there will be a 7.2% increase due to the increase cost of materials. He spoke of the various commission vacancies and stated they will be on the December 15 agenda. He informed the Council a direct mailing will be distributed to all registered voters in District 5 to fill the Council vacancy. Mr. Danicic also stated the survey for the November utility bill is being prepared concerning the public safety fee.

V. PUBLIC COMMENTS

None.

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2008-2812** authorizing the city manager to negotiate and enter into a contract with the State of Oregon regarding grant funds in the amount up to \$286,191 for improvements to Second Street between Highway 219 to Springbrook Road.

2. Consider a motion approving City Council Minutes for September 15, 2008.

MOTION: **Rierson/Boyes** to approve the Consent Calendar including **Resolution No. 2008-2812** and the City Council Minutes for September 15, 2008 as amended. (6 Yes/0 No/1 Vacant) Motion carried.

VII. PUBLIC HEARING

Consider a motion approving **Ordinance No. 2008-2707** establishing a daytime curfew and penalties.

TIME – 7:05 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated.

Mr. Brian Casey, Police Chief, presented the staff report (see official meeting packet for full report).

Councilor Roger Currier questioned some illegal searches that occurred in and felt Newberg's policies should cover that issue a little better. Staff replied there are policies and procedures in place to prevent this kind of thing. Offenses which would require citation or detaining a young person were discussed and the idea of providing home-schooled students with student body identification cards was mentioned and discussed as not well accepted. Staff did not advocate proceeding with this.

Councilor Rierson expressed concern for the fact that any student could simply say they are a home-schooled student and not be detained, even if they are in fact supposed to be in public school. Staff did not feel this was a big concern because the officer could verify the information and it would not happen again. He felt the small percentage of students making trouble are well-known to the officers and school officials and students not generally in trouble would not be affected.

Councilor Larson asked if this would increase the number of students being questioned. Staff felt the number of contacts would not change since students have been contacted before. This ordinance does not stop this contact, it just provides the officers an ability to detain the students until parents or school officials are available.

Councilor Mike Boyes wondered if the officers are keeping track of who is causing problems. He also expressed a concern for scenarios where a George Fox University student who looked young may be approached by officers and questioned. Staff admitted this could happen but emphasized this kind of contact would already occur with or without the daytime curfew, the change occurs with what the officer can do after the questioning reveals the student who is not in public school.

Councilor Marc Shelton asked about the fact that the school district already has the authority to cite truant students and if it is possible those fines will be duplicated by enforcing this curfew. Staff replied they could be double cited but the focus of the daytime curfew is primarily on truancy; it is for keeping the community safe. Staff also stated they were unaware of any truancy citations made since they are difficult to enforce.

Mayor Andrews asked the pleasure of the Council concerning some written testimony received late today.

Councilor Rierson felt it was lengthy and uncomfortable accepting the material without sufficient time to digest the contents.

MOTION: **Rierson/Larson** to not accept written testimony submitted to the record because of length and lateness.

Councilor Shelton asked if the City Attorney had reviewed the document and if he could provide the Council with a summary.

VOTE: To not accept written testimony submitted to the record because of length and lateness. (3 Yes [Boyes, Larson, Rierson]/3 No [Andrews, Currier, Shelton]/1 Vacant) Motion fails for lack of a majority.

Mr. Terrence Mahr, City Attorney, summarized the document discussing juvenile rights being different from adults unless they are emancipated. He mentioned cases where daytime curfews passed constitutional muster as long as certain exceptions were provided for such as being emancipated, conducting legitimate business, being with parents, etc. He discussed various court decisions and why they failed or passed constitutional muster. There was a question of whether the daytime curfew violates 4th amendment rights and the right of parents to direct their children. There were also concerns this type of ordinance targets home-schooled students.

Mayor Andrews opened public testimony. No proponents were present.

Ms. Virginia Rake spoke in opposition to the daytime curfew and submitted written testimony outlining her statement. As a home-school parent, she had concerns this would be legalizing age-based segregation and targeting her children as home-schooled students. She valued her children's ability to move freely within the community without fear of interaction or interruption with law officers. She did not feel this ordinance was necessary since the police already have what they need to handle those actually committing a crime (see official meeting packet for full report).

Councilor Currier asked why she was so opposed to home-school students carrying identification cards.

Ms. Rake said she carried a driver's license and would still be appalled if an officer questioned her and demanded proof of identity without warrant or without a crime being committed. She feels her children should have the same right.

Councilor Currier asked about her comments about fearing law and why the first thought would not be to the fact the officers are there to help everyone in the community.

Ms. Rake explained the fear is more of an awareness of the possibility of legal interaction without doing anything to provoke it. She appreciates her ability to move about within the community freely without concern for being stopped and questioned if she is not doing anything to break any laws; her children deserve the same freedom.

Councilor Currier stated he understood this concern but thought she would be willing to bend a little to help this community with the crimes taking place. In reality he said it was a small infringement on personal rights for an officer to ask who you are and then to have a nice day. He stated it was a minimal cost to help save the community from some of the injustices the officers are trying to stop.

Councilor Rierson asked if her children or any home-schooled students have ever been approached. He felt rather than fearing the law, the interaction between the students and the officers could be a positive experience.

Ms. Rake replied her children have not been approached and she would like to keep it that way. She said it was not a matter of a small or large risk to her children; it was more about the wrongness of saying a group of people, for some greater purpose, are suspect. She used an example of gang activity and the association with Hispanic people and asked if it would be okay to question all Hispanic people since some are involved in gangs. She did not think this would be right, so how can it be right to do the same to children.

Discussion followed about the relation of this ordinance to the issue of truancy and whether truancy should be re-defined and specific trouble-makers or truant students should be targeted, not all people less than 18 years of age. Staff clarified there is a difference between truancy and curfew violations; the truancy issue is difficult to enforce and the curfew violation would allow officers to take action immediately if a student is absent from school and hanging out in the park.

Ms. Susan Dawson lives by the high school and also home-schools her children. She stated her students have been stopped by law enforcement, mistook for someone else, and was searched. She described it as not a good experience. She felt this ordinance would be asking all students to pay the price for the few not doing what they are supposed to be doing. She also desired her students to be able to move freely within the community and public space without fear of being stopped. She explained some of the reasons her children would be out in the community during school hours, like jobs, classes, and library visits. She did not want them to avoid being in public in order to avoid being questioned or mistakenly searched.

Councilor Currier questioned her fears of law enforcement and going out in public.

Ms. Dawson explained that the encounters, as with her son, are not always positive; her son was repeatedly questioned by the same officer. She also spoke of the difference between adult perceptions of officer encounters and children's; kids may not see the encounter as a positive one.

Ms. April McGowan also opposed this ordinance because it limits the rights and privileges of home-schooled students. In response to a previous statement of whether she would be willing to forfeit "small" basic rights for the best interests of society; she says she would not. She felt this could be a baby step towards allowing something larger to be justified which violates a person's right to travel freely without being stopped for any reason.

Councilor Rierson stated the ordinance did not change the officers' current ability to stop and question a minor for loitering in the park.

Ms. McGowan asked why it was needed then.

Councilor Rierson explained there are minors who are not in school breaking the law and causing safety hazards, these provides an opportunity to get them back in school or in the custody of their parents before the crimes are committed.

Councilor Currier also mentioned the additional sunset clause suggested by staff to come back in December of 2009 to evaluate the effectiveness of the ordinance.

Ms. Beth-Ann Zulashi was also concerned her child would be questioned without cause when she directs them to be out in the community taking classes and traveling to different locations with other home-school students. She has great concern for any legislation requiring home-school children to justify where and who they are. She had concerns for citizens hearing about this law passing feeling they have the rights to question her children as well. They should not have to fear the suspicions of others.

Mr. Wes Butler spoke of his opposition to daytime curfews for the last 14 years and gave examples of other cities, like Canby and Silverton, who rejected these kinds of ordinances. He addressed some issues brought up in the document from the Home School Legal Defense Association, noting population percentages. He encouraged the Council to table the matter and do more research. He is sympathetic to the City's problem with crime but felt lawbreakers would be taken care of by enforcement and the public schools need to address the issue of truancy. He felt the officers and schools should find a way to go after specific troublemakers without stopping good kids on the street.

Ms. Debra Headley testified this daytime curfew issue came up in Newberg some nine years ago and the home-school community was invited to be involved with the discussion before it was brought to this point. It was decided this was not in Newberg's best interests then and it was thought better to find a better way to deal with truant students. She stated this ordinance directly effects her family with seven children, some in college who look young, others at the library and others attending classes outside of the home. She stated it may not be any big deal to adults but the encounters can be frightening for children with any authority figures. Her kids may know police are to keep people safe, but they will still be frightened if they are stopped and questioned without doing anything wrong. She felt it was not just a home-school issue and that all citizens have the right to walk in public without being stopped or having to carry a card to prove who they are. If they are breaking laws, then the laws will be enforced.

Mayor Andrews closed public testimony. Staff recommended adopting the ordinance with the sunset clause to evaluate in one year.

Councilor Rierson questioned the statement that one student had been repeatedly stopped by the same officer.

Chief Casey stated he was unaware of that issue and if someone felt they had been wrongfully searched he would appreciate hearing about it; he did not advocate this occurring without reason.

Mayor Andrews closed the public hearing.

Mr. Mahr further reviewed previous case files and decisions regarding daytime curfews and felt the exceptions were included within the ordinance to pass constitutional muster. He clarified this was to help with juvenile crime, not truancy and included the sunset clause to automatically expire on December 31, 2009 if evaluation determines it is not effective (see official meeting packet for full report).

Councilor Boyes felt it was not up to the police to be handling truancy issues and they would only need to deal with those committing crimes, during school hours or after. He did not feel this is an issue effecting Newberg enough to justify the ordinance.

Councilor Rierson saw valid points on both sides, but noted only home-school representation was present this evening. He is not convinced it will reduce any civil liberties but that it will give power to officers to deal with known trouble makers. He did not feel it would affect the home-schooled students unless they are engaged in unlawful activities.

Mayor Andrews mentioned this did not appear to be an imposition to the superintendent of C.S. Lewis, a private school, but he has not heard from any other private schools in the area tonight.

Councilor Currier felt there are issues with juvenile crimes and this ordinance would address them, he felt the issues with the 1st and 4th amendment rights were addressed in the exceptions and the sunset clause would allow for future evaluation at a specific date. He felt it would be nice to at least give it a try given the conditions.

Councilor Shelton stated he was not in support of this ordinance as a mechanism to address youth involved in criminal activity. He felt it was well done by the police department and though he was not against the department he was just more in favor for what was expressed this evening by the people who did show up. He felt addressing problems caused by a small number of individuals at the expense of the larger percentage of good youth sends the message to the good students that we question them and they are suspect. He spoke of the percentages of students attending school regularly at 92%, with only 8% truant and 1-2% of the truant students committing crimes; in private school the attendance is closer to 98-99%. He felt the representation of the home-school parents was not surprising because those parents are very interested in their children's lives and highly scrutinized on the West Coast; he did not want Newberg to be a part of that scrutiny. He felt there is an issue bigger than the truancy or crime and felt it was more of an issue of parental involvement.

Councilor Bob Larson agreed and stated he was also against this ordinance because it violates the rights of the youth. He felt there had not been enough discussion and suggested tabling the items in order to conduct workshops with the school district, the private schools, and the home-school parents; otherwise he would vote against it.

Councilor Rierson stated he was persuaded by the arguments of both other Councilors and the public testimony to vote in opposition. He did not feel there was a need to table the issue farther.

Mayor Andrews did not see the imposition on civil rights as some had argued, but he also did not see this ordinance as the most effective solution to solve the problem of adolescent vandalism and crime; something more is needed.

MOTION: Rierson/Shelton to deny Ordinance No. 2008-2707 establishing a daytime curfew and penalties. (5 Yes/0 No/1 Abstain [Currier]/1 Vacant) Motion carried.
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Councilor Currier stated he abstained from voting because he felt he was prevented from making a motion to table the ordinance.

Mayor Andrews recessed for a five minute break 9:26 PM and reconvened at 9:31 PM.

VIII. CONTINUED BUSINESS

None.

IX. NEW BUSINESS

Consider a motion approving design and construction of the downtown demonstration block.

TIME – 9:31 PM

Mr. David Beam, Economic Development Coordinator, presented the staff report (see official meeting packet for full report).

Discussion followed concerning monies donated “in-kind” and the limit for prevailing wages. It was stated that prevailing wage did not apply because the cost was under the \$50,000 limit (volunteer labor does not count towards the value of that limit). It was later determined at \$10,000 donation from Early Bird Rotary Club would be requested in the form of a material donation.

Mr. Beam showed a graphic video to show how the downtown demonstration block would look based on renderings of the proposed improvements: a bulb out for pedestrians, landscaping, trees, bushes, benches, garbage cans, and bicycle racks. Discussions followed about incorporation of utility poles and the height of trees in various places effecting businesses.

Councilor Rierson asked about irrigation for the new trees and bushes. Staff stated there was no additional irrigation included, but if they could find a way to include this in the budget they would. He noted there is not usually more than the initial care in the first year needed before the trees can survive by themselves.

Councilor Currier recommended staff reduce the cost as much as possible and use local businesses. Discussion followed about casting bench styles and other fabrication alternatives to be explored for the bicycle racks.

Mayor Andrews spoke about funds being \$10K being matched by Council and using the funds in the NDRC budget to cover overage costs.

Councilor Rierson added there should be specific language in the motion to support this to not exceed the \$50K limit and to see the donation from the rotary club in material form.

MOTION: Larson/Rierson to approve the design and construction of the downtown demonstration block limiting the costs to a maximum of \$50,000, requesting the Early Bird Rotary Club donation in materials rather than cash, permitting overage costs to be covered with funds from the current NDRC budget and to mitigate costs through local vendors and value engineering. (5 Yes/1 No [Boyes]/1 Vacant) Motion carried.

X. COUNCIL BUSINESS

TIME – 10:16 PM

Mayor Andrews asked if the Council would reconsider the vote on the **Ordinance No. 2008-2707** since Councilor Currier did not have a chance to make a motion to table the item.

MOTION: Rierson/Boyes to reconsider the vote on **Ordinance No. 2008-2707** to table the vote for further discussion. (3 Yes [Andrews, Currier, Rierson]/3 No [Boyes, Larson, Shelton]/1 Vacant) Motion fails for lack of a majority.

Councilor Boyes questioned the request made to recognize Roger Gano for 36 years of service. Staff was requested to develop a policy for honoring employees and volunteers before deciding.

Councilor Currier asked about the development of the profit enhancement program.

Mayor Andrews stated he was in the process of moving the paperwork for this request forward.

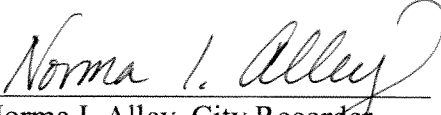
XI. EXECUTIVE SESSION

None.

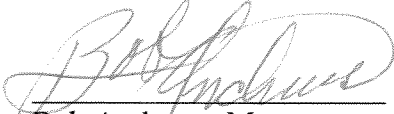
XII. ADJOURNMENT

MOTION: Larson/Boyes to adjourn at 10:38 PM (6 Yes/0 No/1 Vacant) Motion carried.

ADOPTED by the Newberg City Council this 17th day of November, 2008.


Norma I. Alley, City Recorder

ATTEST by the Mayor this 20th day of November, 2008.


Bob Andrews, Mayor